

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations)

§ 18945. Source of Gifts.

(a) General Rule. A person is the source of a gift if the person makes a gift to an official and is not acting as an intermediary.

(b) Gifts through an Intermediary.

(1) A person is the source of a gift, and a third party is an intermediary of the gift under Sections 87210 or 87313, if the person makes a payment to the third party and the payment is used directly or indirectly by the third party to make a gift to an official under any of the following conditions:

(A) The person directs and controls the payment at the time it is used by the third party to make a gift to the official.

(B) The person and third party have agreed that the payment will be used by the third party to make a gift to the official.

(C) The person identifies the official to the third party as the intended beneficiary of the payment prior to the third party making the payment to the official.

(D) The third party identifies the official to the person as the intended beneficiary of the payment prior to the person making the payment to the third party.

(E) The person knows or has reason to know that the sole or primary purpose of the payment is to make gifts to officials.

(F) The official or the official's agent solicits the payment from the person to the third party for the purpose of making a gift to the official.

(2) For purposes of subdivisions (b)(1)(C) and (b)(1)(D), a person or third party “identifies the official” if the person or third party identifies the official by name or any other designation of the official from which it is clear the person or third party is referring to the official, or if the person or third party identifies a group of officials from one or more specific state or local government agencies and the official is part of that group.

(c) A person who pays dues or similar payments for membership in a bona fide association, including any federation, confederation, or trade, labor or membership organization is not the source of gifts made by the association to an official unless the sole or primary purpose of the dues or similar payments is to make gifts to officials.

(d) Presumption of Source by Officials. An official may presume that the person delivering the gift or, if the gift is offered but has not been delivered, the person offering the gift to him or her is the source of the gift unless either of the following apply:

(1) The person delivering or offering the gift discloses to the official the actual source of the gift.

(2) It is clear from the surrounding circumstances at the time the gift is delivered or offered that the person delivering or offering the gift is not the actual source of the gift.

(3) The official solicits a payment pursuant to subdivision (b)(1)(F) and receives or is offered a gift responsive to the solicitation within 12 months of making the solicitation.

(e) Presumption of Source by Intermediaries. A third party otherwise qualifying as an intermediary as a result of a payment solicited from an official pursuant to subdivision (b)(1)(F) may presume that he or she is the source of the gift, and is not required to disclose the actual source of the gift as required by Regulation 18945.3, when both of the following apply:

(1) The third party does not know or have reason to know of the official's solicitation.

(2) The third party does not qualify as an intermediary under subdivisions (b)(1)(A)-(b)(1)(E).

Note: Authority cited: Section 83112, Government Code. Reference: Sections 82028, 86111, 86201, 86203, 87100, 87103, 87207, 87210, 87302, 87313 and 89503, Government Code.

HISTORY

1. New section filed 1-25-93; operative 1-25-93 (Register 93, No. 5).
2. Change without regulatory effect relocating section filed 11-17-94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 46).
3. Amendment of section and Note filed 5-11-2010; operative 6-10-2010. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2010, No. 20).